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MS APPEAL BRIEF - PATENTS
PATENT
3352-0102P

IN THE U.S. PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF

BEFORE THE BOARD OF APPEALS

Kenneth BROWN et al.

Appeal No.:

APPL. NO.: 09/372,750

GROUP: 3625

FILED: August 11, 1999

EXAMINER: J. ZURITA

FOR: METHOD, SYSTEM, ARTICLE OF MANUFACTURE,
AND PROPAGATED SIGNAL FOR ELECTRONICALLY
ORDERING PHOTOGRAPHIC PRINTS AND GIFTS
FROM PHOTOS

APPEAL BRIEF TRANSMITTAL FORM

MS APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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February 27, 2004

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GROUP 3600

Sir:

Transmitted herewith is an Appeal Brief (in triplicate) on behalf of the Appellants in connection with the above-identified application.

☐ The enclosed document is being transmitted via the Certificate of Mailing provisions of 37 C.F.R. § 1.8.

A Notice of Appeal was filed on October 28, 2003.

The fee has been calculated as shown below:

- ☒ Extension of time fee pursuant to 37 C.F.R. §§ 1.17 and 1.136(a) - \$310.00.
- ☒ Fee for filing an Appeal Brief - \$330.00 (large entity).
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☐ Please charge Deposit Account No. 02-2448 in the amount of \$0.00. A triplicate copy of this sheet is attached.

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Respectfully submitted,

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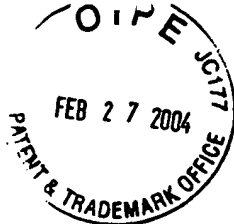
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OF APPELLANTS:
KENNETH BROWN et. al.**

Commissioner for Patents
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GROUP 3600

Sir:

I. REAL PARTY IN INTEREST

The real party in interest for this application is the Assignee, FUJIFILM Software (California), Inc., 1290 Oakmead Parkway, Suite 111, Sunnyvale, California, 94086, USA.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences pending with respect to the subject matter of the present application.

III. STATUS OF CLAIMS

Claims 2-3, 5-9, 11-18, 20-35 and 37-60 remain pending. Claims 28, 32, 37, and 41 are independent. No claims have been allowed.

IV. STATUS OF AMENDMENTS

No amendments have been presented after the Final Rejection.

V. SUMMARY OF THE INVENTION

Systems and methods consistent with the principles of the present invention allow a user to electronically transfer photographs from the user's computer to the service provider to order prints and photo gifts and have the prints and gifts delivered to the user in an easy, flexible, and fast manner. This is done by utilizing a variety of different sources within the computer system to transfer the data and further, by waiting until an order is complete before uploading the digital images [Specification, page 2, lines 9 through 17].

Network photo print system 200 of Fig. 2 includes computer 210, a network sales server 220, an order processing server 222, a photofinishing lab 230, and a third party fulfillment house 240. Computer 210, operated by consumer, includes an operating system, for example, Microsoft Windows 95 (or an upward compatible version) or Windows NT 4.0 (or an upward compatible version). The operating system includes a file system 212. The computer 210 also may run a photo editing application 215 (Microsoft PictureIt® is one example), which is compatible with the operating system.

Digital images, which are stored in the file system 212, are edited by the consumer using the computer photo editing application 212. The edited images are uploaded to the photofinishing lab 230 and/or the third party fulfillment house 240, via a Network Access Protocol (NAP) module 216, the network sales server 220 and the order processing server 222. The photofinishing lab 230 produces high quality images, which are delivered to the consumer 1, via means other than the network sales server 220 and the order processing server 222 (mail, courier, etc). The third party fulfillment house 240 also produces items such as mugs, T-shirts, etc., with the desired images printed thereon, and provides the desired goods to the consumer 1, also via other means. Similar to the conventional system, the photofinishing lab 230 and the third party fulfillment house 240 also provide pricing and merchandise availability information to the consumer 1, at the computer 210, via the network sales server 220 and the order processing server 222. [Specification, page 2, line 29 through page 3, line 18].

The NAP module 216, in addition to receiving digital images from the consumer photo editing application 214, also receives digital images from a digital still camera or scanner 250, via a DSC/scanner interface application 218. The NAP module 216 also receives digital images from the file system 212, via an operating system shell extension 219. [Specification, page 3, lines 19 through 23].

As shown in Fig. 1, the NAP module 216 transfers digital images stored in the file system 212 and edited by consumer photo editing application 214 to

the photofinishing lab 230 and the third party fulfillment house 240. The NAP module 216 also transfers digital information received directly from a digital still camera/scanner, via a DSC/scanner interface application. The NAP module 216 also transfers digital images stored in the file system 219, using a shell extension 219 to the operating system. The shell extension 219 permits a technique for providing a PRINT option on a PROPERTIES menu, available through a right mouse button click on a file. The shell extension 219, extending the operating interface, such that an option appears for image file icons on the PROPERTY menu and/or the FILE menu, such that the consumers can print their photos without having to invoke a separate application program. [Specification, page 4, lines 6 through 17].

The NAP module 216 launches a conventional Web browser which allows the consumer to directly interact with the network sales server 220 to view the products and prices and to place the order by specifying the desired information, namely quantities, products, sizes, etc., of the desired products, before any of the images are uploaded by the NAP module 216. [Specification, page 5, lines 8 through 12].

By waiting until the order is complete, before uploading the digital images, the NAP module 216 increases the speed of the ordering process. The NAP module 216 achieves this goal by maintaining the images to be uploaded on the memory at the computer 210 until the order is complete. [Specification, page 5, lines 13 through 16].

As long as an order is open, the NAP module 216 provides the consumer with an indication that reminds the consumer 1 of the open order. When the consumer chooses to pass one of the stored or edited images, the desired image data is passed to the NAP module 216. When the consumer is interacting with the network sales server module 220, the NAP module 216 passes the image information to the server module 220, which checks the image information for possible less-than-optimum quality reprints, due to resizing and cropping, and outputs an error message to the consumer if necessary. [Specification, page 5, lines 17 through 24].

When the consumer indicates that he/she is finished with the order, the NAP module 216 notifies the photo editing application 214 that an order has been placed, the desired image files are uploaded to the network sales server 220 and/or order processing server 222, and an internet file upload application is launched. [Specification, page 5, lines 25 through 28].

The shell extension 219, NAP module 216, and the photofinishing lab 230 assist in the transfer of information. Information is passed between NAP module 216 and the photofinishing lab 230 via the network sales server 220 and the order processing server 222. The shell extension 219 first queries the NAP module 2156 regard its status (busy, uploading, ready, pending order) and checks for an internet connection. The shell extension 219 can call a help file that provides the consumer with information regarding printing at the photofinishing lab 230 and a jump to a relevant URL. The shell extension 219 writes thumbnail images to designated locations and passes the locations to

the NAP module 216. The shell extension 219 also bundles JPEG files of correct resolution and job number to a single ZIP file and passes that file to the NAP module 216. The shell extension 219 also allows the consumer 1 the opportunity, on start-up, to send any aborted order that is pending. [Specification, page 7, lines 4 through 16].

In order to start the above described transfer, the consumer 1 opens the "My Computer" window or Windows Explorer, right clicks on any image file to bring up the properties menu, and selects the print option, as illustrated in Figure 5. The consumer 1 right clicks on one or more image files and chooses the print option, and the operating system launches the shell extension 219. The shell extension 219 creates JPEG thumbnail images and displays all the images. The consumer 1 selects the correct pictures to be uploaded. The consumer 1 clicks the print button as illustrated in Figure 5. The shell extension 219 then calls the NAP module 216 and transfers pointers to the thumbnail image files and the current resolution of each thumbnail. The NAP module 216 calls the network sales server 220, identifies itself, and passes the pointers to the thumbnail images and the current resolution to the network sales server 220. The network sales server 220 requests the consumer to provide a shipping/billing address and billing information. When the consumer 1 "checks out", the network sales server 220 calls back to the NAP module 216 passing a job number and asking for all the pictures the consumer 1 placed orders and necessary resolution needed to fill the order. The shell extension 219 bundles into a ZIP file all the files requested at their maximum resolution

in JPEG format, plus other information saved to the specified directory, and passes it to the NAP module 216. The NAP module 216 uploads the file to the network sales server 220. The network sales server 220, the order processing server 222, the photo finishing lab 230 and/or the third party fulfillment house 240 process the order and the consumer 1 receives the desired photographs and/or merchandise via other means. The network sales server 220 also sends a confirmation to the consumer 1. [Specification, page 8, lines 11 through 32].

This description of the invention has been submitted to comply with the Patent Office rules for submitting Appeal Briefs. This summary of the invention should not be considered as limiting the claimed invention.

VI. THE GROUNDS OF REJECTION

The Examiner has rejected all pending claims as follows:

Claims 2-3, 5-9, 11-18, 20-35, and 37-60 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,974,401 to *Enomoto* (hereinafter "*Enomoto*") in view of U.S. Patent No. 6,017,157 to *Garfinkle* (hereinafter "*Garfinkle*")

VII. ISSUES ON APPEAL

The issues to be resolved in this Appeal are:

Whether claims 2-3, 5-9, 11-18, 20-35, and 37-60 are unpatentable under 35 U.S.C. § 103(a) based upon the teachings of *Enomoto* in view of *Garfinkle*.

VIII. GROUPING OF CLAIMS

The claims should be grouped as follows for the purposes of this Appeal:

All claims are separately grouped and argued.

IX. ARGUMENT**A. Argument Summary: The *Enomoto* Rejection**

The reasoning provided in support of the rejection of claims 2-3, 5-9, 11-18, 20-35, and 37-60 under 35 U.S.C. § 103(a) as being unpatentable over *Enomoto* in view of *Garfinkle* fails to establish *prima facie* obviousness. Generally, the deficiencies of the rejection are that: (a) the rejection attributes certain claimed features to the primary reference, *Enomoto*, that a detailed reading of the reference reveals are not taught therein; (b) when the nature and purpose of the display technique disclosed by *Enomoto* is recognized, it is evident that there is no suggestion or motivation in either of the references cited in support of the rejection or in knowledge generally available to those skilled in the art to modify *Enomoto* in a manner asserted by the rejection; and (c) by asserting that certain modifications to the system of *Enomoto* would have been obvious without a proper suggestion or motivation in the applied references or elsewhere to make the asserted modifications, the rejection appears to rely on impermissible hindsight reasoning. Such deficiencies exist for the rejection of each of claims 2-3, 5-9, 11-18, 20-35, and 37-60.

B. The Legal Requirements of *Prima Facie* Obviousness

To establish *prima facie* obviousness, all claim limitations must be taught or suggested by the prior art and the asserted modification or combination of the prior art must be supported by some teaching, suggestion, or motivation in the applied references or in knowledge generally available to one skilled in the art. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). The prior art must suggest the desirability of the modification in order to establish a *prima facie* case of obviousness. In re Brouwer, 77 F.3d 422, 425, 37 USPQ2d 1663, 1666 (Fed. Cir. 1995). It can also be said that the prior art must collectively suggest or point to the claimed invention to support a finding of obviousness. In re Hedges, 783 F.2d 1038, 1041, 228 USPQ 685, 687 (Fed. Cir. 1986); In re Ehrreich, 590 F.2d 902, 908-909, 200 USPQ 504, 510 (C.C.P.A. 1979).

The teaching or suggestion to make the asserted combination or modification of the primary reference must be found in the prior art and cannot be gleaned from applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). In other words, the use of hindsight to reconstruct the claimed invention is impermissible. Uniroyal Inc. v. Rudlan-Wiley Corp., 5 USPQ 1434 (Fed. Cir. 1983).

Finally, when considering the differences between the primary reference and the claimed invention, the question for assessing obviousness is not whether the differences themselves would be been obvious, but instead

whether the claimed invention as a whole would have been obvious. Stratoflex Inc. v. Aeroquip Corp., 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983).

C. The Rejection Fails to Establish *Prima Facie* Obviousness of Independent Claim 28

Independent claim 28 is directed to a network photo print system comprising, *inter alia*, a user station, capable of running a camera/scanner applications program; a photo editing applications program; and a network access protocol module. The user station is further capable of running an operating system, including an operating system desktop shell interface and an extension to the operating system desktop shell interface, the shell extension supplying third image data to the user stations, wherein the shell extension is capable of facilitating an order.

In maintaining the rejection of independent claim 1 based on *Enomoto* and *Garfinkle*, the Final Office Action asserts on page 8 that:

The Examiner respectfully notes that neither reference specifically use the terms "operating system", "shell or shell extension", "shell extension to an operating system" to describe file access and operating system commands. To access files and access system commands, users often use interfaces. An interface is software that enables a program to work with the user (the user interface, which can be a command-line interface, menu-drive interface, or a graphical user interface), with another program such as the operating system, or with a computer's hardware. [Citing to Definition of interface, MICROSOFT Computer dictionary]. Enamoto's users interact with files and other system resources. Garfinkle discloses use of various *interfaces* to access, upload and download files on a network, including, Interface A, B, HTML.

In support of the Examiner's rejection, the Examiner admits that neither reference specifically discloses an operating system, a shell or shell extension shell extension to an operating system to describe file access and operating system commands. However, in interpreting the claim language, the Examiner's interpretation of the term "shell extension" to be any interface is too broad. It is respectfully submitted that while it is true that a shell extension is an interface, not all interfaces are shell extensions. One of ordinary skill in the art would interpret a shell extension as a small system utility that allows a user to access and configure the computer's operations. "Programming Windows NT No. 4 Unleashed," Mickey Williams and David Hamilton, © 1996, describes the various shell extension types for windows NT. Various shell extensions include:

- Icon handlers for changing the appearance of a file's icon on a per-file object basis. By implementing this interface, for example, you can change the icon displayed for a file object based on its internal state, its age, or any other criteria.
- Copy hook handlers are invoked when a file object is copied, moved, or deleted. By implementing this interface, you can supplement or prevent the operation.
- Context menu extensions add items to the context menu displayed after a file object is right-clicked.
- Property sheet extensions add pages to the property sheet displayed by the shell for a particular type of file object.

- Drag and drop handlers are called after a drag and drop operation. They are almost identical to context menu extensions.
- Drop target handlers control the activity that occurs when a file object is dropped after a drag and drop operation.
- Data object handlers supply the file object during a drag and drop operation.

As can be seen from these different types of shell extensions, they provide for an interface for a user to access and configure the computer's operations. It would not be obvious to one of ordinary skill in the art to incorporate a shell extension to supply third image data to the user extension where the shell extension is capable of facilitating an order as set forth in claim 28. While Appellants admit that shell extensions are known within the context of an operating system, it is respectfully submitted that the use of shell extensions to facilitate the ordering of photo print related services in a network photo print system is not well known.

The digital print order system of *Enomoto* provides for image processing-ordering software being installed on a personal computer after it is downloaded from the database 24 of the photo finisher 12. (Col. 3, lines 41-43). It is respectfully submitted that this software is installed on the personal computer and operates on top of the operating platform of the system. There is no teaching or suggestion in *Enomoto* that this application be provided in a shell extension.

The method of processing digital images set forth in *Garfinkle* utilizes a graphical user interface to facilitate interaction between computers on the network. However, a graphical user interface is not equivalent to a shell extension. A graphical user interface is a software application that operates on top of an operating platform. In contrast, a shell extension operates within the operating platform.

As noted above, in order to sustain a claim rejection under 35 U.S.C. § 103(a), it is respectfully submitted that the Examiner must meet his burden to establish a *prima facie* case. To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all of the claim limitations.

It is respectfully submitted that the Examiner admits that neither of the references, either alone or in combination (assuming these references may be combined, which Appellants do not admit), teach utilizing a shell extension for facilitating an order. Further, as noted above, it is respectfully submitted that it is not well known to one of ordinary skill in the art to utilize a shell extension to facilitate an order for photo print services. As such, based upon the Examiner's failure to provide a reference that teaches or suggests all of the claimed elements, it is respectfully submitted that the Examiner has failed to establish a *prima facie* case of obviousness under 35 U.S.C. § 103.

In providing the required motivation for combining the *Enomoto* and *Garfinkle* references, the Examiner asserts on page 14, line 9 through page 15, line 6:

One of ordinary skill in the art at the time the invention was made would have been motivated to combine Enomoto and well-known file system interfaces (i.e., shell and shell extensions) to permit users of personal desktop computers to access files on a personal desktop computer's disks, including a personal desktop computer's hard disk(s), floppy disk(s), DVD, FD, MO and CD, for the obvious reason that by including shells and shell extensions such as WINDOWS FILE EXPLORER, users are provided with convenient, delightful, easy to use interfaces that allow them to manipulate file image data. For example, users may copy files from one drive to another via such interfaces. It is well known that users prefer easy-to-use commands and graphical interfaces to manage their files and data. Without such interfaces and extensions, users may feel overwhelmed or frustrated by having to enter obscure, non-intuitive operating system commands. Users who are unable to remember operating system commands may well avoid carrying on electronic commerce over the Internet, for example. On the other hand, well-designed, intuitive interfaces permit users to feel comfortable in performing complex operations such as moving a file from a local disk to a network drive. This creates a general feeling of satisfaction, delight and well being and permits users wide use of electronic commerce applications such as ordering customized products that contain images created by users.

Regarding the modifications of *Enomoto* that the rejection asserts would have been obvious in view of, *arguendo*, well-known file system interfaces, i.e., shell and shell extensions to operating systems, the Examiner stresses that users may be provided with convenient, delightful, easy to use interfaces that allow them to manipulate file image data. However, *Enomoto* provides users with just that type of interface. The user fails to provide any motivation as to why one of ordinary skill in the art would have been motivated to provide for an extension to the operating system desktop shell interface for supplying third image data to the user station where the shell extension is capable of

facilitating an order. In other words, the Examiner has failed to provide any motivation as to why one skilled in the art would have been motivated to move the functionality of facilitating print ordering from a software application to a shell extension. Neither of the references even mentions shells or shell extensions. Further, it is not well-known to use shells or shell extensions to facilitate print ordering. As such, there is no motivation, either in the knowledge of one of ordinary skill or in the references themselves, to combine the references as suggested by the Examiner. As such, the Examiner has failed to provide proper motivation in support of his rejection of claim 28, and, thus, has failed to establish *prima facie* obviousness under 35 U.S.C. § 103.

Further, by asserting that it would have been obvious to modify *Enomoto* to include the features of, *arguendo*, well-known file system interfaces, or shells, with no suggestion or motivation in the applied references or elsewhere to do so, the rejection appears to rely on impermissible hindsight reasoning.

For at least these reasons, Appellants submit that the rejection set forth in the Final Office Action fails to establish a *prima facie* case of obviousness of independent claim 28.

D. The Rejection Fails to Establish *Prima Facie* Obviousness of Dependent Claim 29

Claim 29 depends directly from claim 28. Appellants submit that the rejection under 35 U.S.C. § 103(a) based on the combination of *Emamoto* in view of *Garfinkle* fails to establish *prima facie* obviousness of claim 29 for at least the reasons set forth above concerning claim 28. Appellants also submit

that dependent claim 29 is separately patentable and offers the following additional argument for the invention of claim 29.

As discussed above with regard to claim 28, neither of the references, either alone or in combination, assuming these references are combinable, which Appellants do not admit, teach or suggest “an operating system, including an operating system desktop shell interface and an extension to the operating system desktop shell interface, the shell extension supplying third image data to the user station, wherein the shell extension is capable of facilitating an order,” as recited in claim 28. As the Examiner has failed to provide a reference that teaches or suggests “wherein said network access protocol module delays the outputting any one of the first, second, and third image data to said network sales/order processing server until the order for a plurality of images is complete,” as recited in claim 29, in combination with the elements set forth in claim 28, it is respectfully submitted that the Examiner has failed to establish *prima facie* obviousness under 35 U.S.C. § 103(a). Thus, claim 29 is patentable over *Enomoto* in view of *Garfinkle*.

E. The Rejection Fails to Establish *Prima Facie* Obviousness of Dependent Claim 30

Claim 30 depends directly from claim 28. Appellants submit that the rejection under 35 U.S.C. § 103(a) based on the combination of *Enomoto* in view of *Garfinkle* fails to establish *prima facie* obviousness of claim 30 for at least the reasons set forth above concerning claim 28. Appellants also submit

that dependent claim 30 is separately patentable and offers the following additional argument for the invention of claim 30.

As discussed above with regard to claim 28, neither of the references, either alone or in combination, assuming these references are combinable, which Appellants do not admit, teach or suggest "an operating system, including an operating system desktop shell interface and an extension to the operating system desktop shell interface, the shell extension supplying third image data to the user station, wherein the shell extension is capable of facilitating an order," as recited in claim 28. As the Examiner has failed to provide a reference that teaches or suggests "wherein the extension to the operating system desktop shell interface permits a user of the user station to initiate an order directly from a system file level of the operating system, without invoking an additional application program," as recited in claim 30, in combination with the elements set forth in claim 28, it is respectfully submitted that the Examiner has failed to establish *prima facie* obviousness under 35 U.S.C. § 103(a). Thus, claim 30 is patentable over *Enomoto* in view of *Garfinkle*.

In addition to the above, in reviewing the final Official Action, Appellants note that the Examiner has failed to specifically address this claim element. While the Examiner asserts in the Final Official Action on page 16, lines 20-24:

Users may click on a button of a browser to connect to the Internet, thereby initiating an application at a network access protocol module such as in TCP/IP through an extension (a button on a browser) to an operating system desktop shell interface (e.g., a browser).

It is respectfully submitted that a browser is a software application whereby a user may access the Internet. One of ordinary skill in the art would appreciate that a browser is not an extension to a shell interface. In fact, as noted above, claim 30 recites that the extension to the operating system desktop shell interface permits a user to initiate an order directly from a system file level of the operating system, without invoking an additional application program. As such, the Examiner has failed to provide a reference that teaches or suggests all of the claim elements, thus failing to establish *prima facie* obviousness.

For the reasons set forth above, claim 30 is patentable over *Enomoto* in view of *Garfinkle*.

F. The Rejection Fails to Establish *Prima Facie* Obviousness of Dependent Claim 31

Claim 31 depends directly from claim 28. Appellants submit that the rejection under 35 U.S.C. § 103(a) based on the combination of *Enomoto* in view of *Garfinkle* fails to establish *prima facie* obviousness of claim 31 for at least the reasons set forth above concerning claim 28. Appellants also submit that dependent claim 31 is separately patentable and offers the following additional argument for the invention of claim 31.

As discussed above with regard to claim 28, neither of the references, either alone or in combination, assuming these references are combinable, which Appellants do not admit, teach or suggest “an operating system, including an operating system desktop shell interface and an extension to the

operating system desktop shell interface, the shell extension supplying third image data to the user station, wherein the shell extension is capable of facilitating an order,” as recited in claim 28. As the Examiner has failed to provide a reference that teaches or suggests “wherein said network access protocol module is a plug-in module,” as recited in claim 31, in combination with the elements set forth in claim 28, it is respectfully submitted that the Examiner has failed to establish *prima facie* obviousness under 35 U.S.C. § 103(a). Thus, claim 31 is patentable over *Enomoto* in view of *Garfinkle*.

G. The Rejection Fails to Establish *Prima Facie* Obviousness of Dependent Claim 46

Claim 46 depends directly from claim 28. Appellants submit that the rejection under 35 U.S.C. § 103(a) based on the combination of *Enomoto* in view of *Garfinkle* fails to establish *prima facie* obviousness of claim 46 for at least the reasons set forth above concerning claim 28. Appellants also submit that dependent claim 46 is separately patentable and offers the following additional argument for the invention of claim 46.

As discussed above with regard to claim 28, neither of the references, either alone or in combination, assuming these references are combinable, which Appellants do not admit, teach or suggest “an operating system, including an operating system desktop shell interface and an extension to the operating system desktop shell interface, the shell extension supplying third image data to the user station, wherein the shell extension is capable of facilitating an order,” as recited in claim 28. As the Examiner has failed to

provide a reference that teaches or suggests “wherein the user station displays a locally stored thumbnail image corresponding to any one of the first, second, and third image data while sending ordering information to said network sales/order processing server,” as recited in claim 46, in combination with the elements set forth in claim 28, it is respectfully submitted that the Examiner has failed to establish *prima facie* obviousness under 35 U.S.C. § 103(a). Thus, claim 46 is patentable over *Enomoto* in view of *Garfinkle*.

H. The Rejection Fails to Establish *Prima Facie* Obviousness of Dependent Claim 47

Claim 47 depends directly from claim 28. Appellants submit that the rejection under 35 U.S.C. § 103(a) based on the combination of *Enomoto* in view of *Garfinkle* fails to establish *prima facie* obviousness of claim 47 for at least the reasons set forth above concerning claim 28. Appellants also submit that dependent claim 47 is separately patentable and offers the following additional argument for the invention of claim 47.

As discussed above with regard to claim 28, neither of the references, either alone or in combination, assuming these references are combinable, which Appellants do not admit, teach or suggest “an operating system, including an operating system desktop shell interface and an extension to the operating system desktop shell interface, the shell extension supplying third image data to the user station, wherein the shell extension is capable of facilitating an order,” as recited in claim 28. As the Examiner has failed to provide a reference that teaches or suggests “wherein said network access

protocol module sends said network sales/order processing server a pointer to said thumbnail image locally stored at said user station,” as recited in claim 47, in combination with the elements set forth in claim 28, it is respectfully submitted that the Examiner has failed to establish *prima facie* obviousness under 35 U.S.C. § 103(a). Thus, claim 47 is patentable over *Enomoto* in view of *Garfinkle*.

I. The Rejection Fails to Establish *Prima Facie* Obviousness of Independent Claim 32

Independent claim 32 is directed to a method of on-line ordering of image-related services comprising, *inter alia*, receiving, exchanging ordering information, between the user station and the external network entity after accessing the application at the external network entity, for a image-related service for the digital image, and uploading the digital image to the external network entity or another external network entity subsequent to exchanging all ordering information.

In maintaining the rejection of independent claim 32 based on *Enomoto* and *Garfinkle*, the Final Office Action asserts on page 6, line 21 through page 7, line 5 as follows:

The Examiner respectfully notes that neither reference specifically defines what constitutes “all ordering information,” per applicants’ latest amendment. The Examiner respectfully submits that an order is a request to buy, sell, deliver or receive goods or services that commits the issuer of the order to the terms specified. For purposes of this examination, Examiner will give the terms “order”, “ordering”, “ordering information”, “all ordering information” their *broadest reasonable* interpretation to read on information sufficient to permit commercial activity to take place.

Additionally, the Final Office Action asserts on page 11 that:

...uploading digital images to servers (including one or more external network entity) subsequent to exchanging ordering information (Col. 2, lines 23-60, which discusses that digital images are sent to an order receiver after order data is received).

It is well known that the claims are to be interpreted in light of the specification. As such, Appellants are confused as to why the Examiner is looking to the references to find a definition as to what constitutes "all ordering information."

Further, it appears from the Examiners statements set forth above that the Examiner has removed the term "all" when providing support for the claim rejection. As the Examiner has failed to consider all of the claim elements, the Examiner has failed to establish prima facie obviousness by failing to provide references that teach or suggest all of the claim elements.

Further, *Enomoto et al.* discloses a digital print order and delivery method and system. *Enomoto et al.* discloses at col. 6, ll. 10-18:

Upon user's request for downloading sent from the connected personal computer 11 on the user side 10, the work station 13 of the photofinisher 12 sends out the image processing-ordering software to the personal computer 11 of the user side 10. The user 10 extracts the downloaded image processing-ordering software and installs it in the personal computer 11. If the installation is accomplished normally, a user registration menu appears, which helps the user register for the print order.

Additionally, *Enomoto et al.* discloses that upon receipt of an accept number and a message of acceptance at the personal computer 11, the user selects or designates the order execution after confirming the delivery date and

the charge on the screen and then **sends the entire print order data to the work station 13. The entire print order data is constituted of all the print order data and the image data for the print (col. 7, ll. 13-19).**

It is respectfully submitted that *Enomoto et al.* fails to disclose uploading the digital image to the external network entity or another external network entity subsequent to exchanging all ordering information. It is respectfully submitted that *Garfinkle* fails to cure the deficiencies of the teachings of *Enomoto et al.* (assuming these references are combinable, which Appellants do not admit), as *Garfinkle* fails to teach or suggest this element of claim 32. As such, it is respectfully submitted that claim 32, is allowable over the art as cited by the Examiner.

J. The Rejection Fails to Establish *Prima Facie* Obviousness of Dependent Claims 2-3, 5-9, 33-35, 49, 50-52, and 55-56

Claims 2-3, 5-9, 33-35, 49, 50-52, and 55-56 depend either directly or indirectly from claim 32. Appellants submit that the rejection under 35 U.S.C. § 103(a) based on the combination of *Enomoto* in view of *Garfinkle* fails to establish *prima facie* obviousness of claims 2-3, 5-9, 33-35, 49, 50-52, and 55-56 for at least the reasons set forth above concerning claim 32. Appellants also submit that dependent claims 2-3, 5-9, 33-35, 49, 50-52, and 55-56 are separately patentable and offers the following additional argument for the invention of claims 2-3, 5-9, 33-35, 49, 50-52, and 55-56.

As discussed above with regard to claim 32, neither of the references, either alone or in combination, assuming these references are combinable,

which Appellants do not admit, teach or suggest “exchanging ordering information, between the user station and the external network entity after accessing the application at the external network entity, for a image-related service for the digital image, and uploading the digital image to the external network entity or another external network entity subsequent to exchanging all ordering information,” as recited in claim 32. As the Examiner has failed to provide a reference that teaches or suggests each of the elements set forth in claims 2-3, 5-9, 33-35, 49, 50-52, and 55-56, in combination with the elements set forth in their respective independent claim 32 and any respective intervening claims, it is respectfully submitted that the Examiner has failed to establish *prima facie* obviousness under 35 U.S.C. § 103(a). Thus, claims 2-3, 5-9, 33-35, 49, 50-52, and 55-56 are patentable over *Enomoto* in view of *Garfinkle*.

K. The Rejection Fails to Establish *Prima Facie* Obviousness of Independent Claim 37

Independent claim 37 is directed to a computer program embodied in a computer-readable medium for on-line ordering of image-related services comprising, *inter alia*, an ordering code segment for exchanging ordering information, between said user station and said external network entity after accessing the application at the external network entity, for an image-related service for said digital image; and an uploading code segment for uploading said digital image to said external network entity or another external network entity subsequent to exchanging all ordering information.

Similar to the argument set forth above with regard to claim 32, neither *Enomoto* nor *Garfinkle* teach or suggest uploading said digital image to said external network entity or another external network entity subsequent to exchanging all ordering information. As such, based upon the Examiner's failure to provide reference that teach or suggest "uploading said digital image to said external network entity or another external network entity subsequent to exchanging all ordering information," together with the other elements set forth in the claim, claim 37 is patentable over the references as cited by the Examiner.

L. The Rejection Fails to Establish *Prima Facie* Obviousness of Dependent Claims 11-18, 37-40, 48, and 53-54

Claims 11-18, 37-40, 48, and 53-54 depend either directly or indirectly from claim 37. Appellants submit that the rejection under 35 U.S.C. § 103(a) based on the combination of *Enomoto* in view of *Garfinkle* fails to establish *prima facie* obviousness of claims 11-18, 37-40, 48, and 53-54 for at least the reasons set forth above concerning claim 37. Appellants also submit that dependent claims 11-18, 37-40, 48, and 53-54 are separately patentable and offers the following additional argument for the invention of claims 11-18, 37-40, 48, and 53-54.

As discussed above with regard to claim 37, neither of the references, either alone or in combination, assuming these references are combinable, which Appellants do not admit, teach or suggest "an uploading code segment for uploading said digital image to said external network entity or another external network entity subsequent to exchanging all ordering information," as

recited in claim 37. As the Examiner has failed to provide a reference that teaches or suggests each of the elements set forth in claims 11-18, 37-40, 48, and 53-54, in combination with the elements set forth in their respective independent claim 37 and any respective intervening claims, it is respectfully submitted that the Examiner has failed to establish *prima facie* obviousness under 35 U.S.C. § 103(a). Thus, claims 11-18, 37-40, 48, and 53-54 are patentable over *Enomoto* in view of *Garfinkle*.

M. The Rejection Fails to Establish *Prima Facie* Obviousness of Independent Claim 41

Independent claim 41 is directed to a computer signal for on-line ordering of image-related services comprising, *inter alia*, an ordering segment for exchanging ordering information, between said user station and said external network entity after accessing the application at the external network entity, for an image-related service for said digital image; and an uploading segment for uploading said digital image to said external network entity or another external network entity subsequent to exchanging all ordering information.

Similar to the argument set forth above with regard to claim 32, neither *Enomoto* nor *Garfinkle* teach or suggest uploading said digital image to said external network entity or another external network entity subsequent to exchanging all ordering information. As such, based upon the Examiner's failure to provide reference that teach or suggest "uploading said digital image to said external network entity or another external network entity subsequent

to exchanging all ordering information,” together with the other elements set forth in the claim, claim 41 is patentable over the references as cited by the Examiner.

N. The Rejection Fails to Establish *Prima Facie* Obviousness of Dependent Claims 20-27, 42-45, and 57-60

Claims 20-27, 42-45, and 57-60 depend either directly or indirectly from claim 41. Appellants submit that the rejection under 35 U.S.C. § 103(a) based on the combination of *Enomoto* in view of *Garfinkle* fails to establish *prima facie* obviousness of claims 20-27, 42-45, and 57-60 for at least the reasons set forth above concerning claim 41. Appellants also submit that dependent claims 20-27, 42-45, and 57-60 are separately patentable and offers the following additional argument for the invention of claims 20-27, 42-45, and 57-60.

As discussed above with regard to claim 41, neither of the references, either alone or in combination, assuming these references are combinable, which Appellants do not admit, teach or suggest “an uploading code segment for uploading said digital image to said external network entity or another external network entity subsequent to exchanging all ordering information,” as recited in claim 41. As the Examiner has failed to provide a reference that teaches or suggests each of the elements set forth in claims 20-27, 42-45, and 57-60, in combination with the elements set forth in their respective independent claim 41 and any respective intervening claims, it is respectfully submitted that the Examiner has failed to establish *prima facie* obviousness under 35 U.S.C. § 103(a). Thus, claims 20-27, 42-45, and 57-60 are patentable over *Enomoto* in view of *Garfinkle*.

X. CONCLUSION


For the reasons specifically set forth above, the outstanding rejections set forth in the Final Office Action should be reversed.

Respectfully submitted,

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Appendix of Claims

2. (Previously Presented) The method of claim 32, wherein the digital image is a digital photographic image.

3. (Previously Presented) The method of claim 33, wherein the at least two of a plurality of different sources include a photo editing application, a digital device interface application, and a shell extension.

5. (Previously Presented) The method of claim 32, wherein the external network entity includes at least one of a server, photofinishing lab and third party fulfillment house.

6. (Previously Presented) The method of claim 32, wherein the image-related service generates at least one of photographs and merchandise with photographs imprinted thereon.

7. (Previously Presented) The method of claim 32, wherein
said step of uploading delays uploading the digital image until an order
for a plurality of digital images is complete.

8. (Previously Presented) The method of claim 32, further comprising:
checking the digital image for image quality.

9. (Previously Presented) The method of claim 33, wherein the at least two of a plurality of different sources include a photo editing application, a digital device interface application, a shell extension, and the external network entity.

11. (Previously Presented) The computer program of claim 37, wherein the digital image is a digital photographic image.

12. (Previously Presented) The computer program of claim 38, wherein the at least two of a plurality of different sources include a photo editing application, a digital device interface application, and a shell extension.

13. (Previously Presented) The computer program of claim 37, wherein the ordering information includes pricing and merchandise availability.

14. (Previously Presented) The computer program of claim 37, wherein the external network entity includes at least one of a server, photofinishing lab and third party fulfillment house.

15. (Previously Presented) The computer program of claim 37, wherein the image-related service generates at least one of photographs and merchandise with photographs imprinted thereon.

16. (Previously Presented) The computer program of claim 37, wherein the uploading code segment delays uploading the digital image until an order for a plurality of digital images is complete.

17. (Previously Presented) The computer program of claim 37, further comprising:

a checking code segment for checking the digital image for image quality.

18. (Previously Presented) The computer program of claim 38, wherein the at least two of a plurality of different sources include a photo editing application, a digital device interface application, a shell extension, and the external network entity.

20. (Previously Presented) The computer signal of claim 41, wherein the digital image is a digital photographic image.

21. (Previously Presented) The computer signal of claim 42, wherein the at least two of a plurality of different sources include a photo editing application, a digital device interface application, and a shell extension.

22. (Previously Presented) The computer signal of claim 41, wherein the ordering information includes pricing and merchandise availability.

23. (Previously Presented) The computer signal of claim 41, wherein the external network entity includes at least one of a server, photofinishing lab and third party fulfillment house.

24. (Previously Presented) The computer signal of claim 41, wherein the image-related service generates at least one of photographs and merchandise with photographs imprinted thereon.

25. (Previously Presented) The computer signal of claim 41, wherein the uploading segment delays uploading the digital image until an order for a plurality of digital images is complete.

26. (Previously Presented) The computer signal of claim 41, further comprising:

a checking segment for checking the digital image for image quality.

27. (Previously Presented) The computer signal of claim 42, wherein the at least two of a plurality of different sources include a photo editing application, a digital device interface application, a shell extension, and the external network entity.

28. (Previously Presented) A network photo print system, comprising:
a user station, capable of running

a camera/scanner applications program for supplying first image data to the user station,

a photo editing applications program for supplying second image data to the user station,

an operating system, including an operating system desktop shell interface and an extension to the operating system desktop shell interface, the shell extension supplying third image data to the user station, wherein the shell extension is capable of facilitating an order, and

a network access protocol module capable of receiving any one of the first, second, and third image data, receiving order and merchandise availability information from an external network entity; processing the order based on any one of the first, second, and third image data, and outputting any one the first, second, and third image data;

a network sales/order processing server for receiving the order and for receiving any one the first, second, and third image data image data from the user station after receiving the order; and

a photofinishing lab for producing photographic-quality prints images based on the order and any one the first, second, and third image data from the network sales/order processing server.

29. (Previously Presented) The network photo print system of claim 28, wherein said network access protocol module delays the outputting any one

the first, second, and third image data to said network sales/order processing server until the order for a plurality of images is complete.

30. (Original) The network photo print system of claim 28, wherein the extension to the operating system desktop shell interface permits a user of the user station to initiate an order directly from a system file level of the operating system, without invoking an additional application program.

31. (Original) The network photo print system of claim 28, wherein said network access protocol module is a plug-in module.

32. (Previously Presented) A method of on-line ordering of image-related services, comprising:

receiving, at a user station, a digital image;

establishing a network connection between said user station and an external network entity;

accessing an application at the external network entity through the network connection;

exchanging ordering information, between said user station and said external network entity after accessing the application at the external network entity, for an image-related service for said digital image; and

uploading said digital image to said external network entity or another external network entity subsequent to exchanging all ordering information.

33. (Previously Presented) The method of claim 32, wherein
said user station receives digital images from at least two of a plurality of
different sources.

34. (Previously Presented) The method of claim 49, wherein
said user station receives said digital image using the shell extension of
an operating system to access said digital image from a file system.

35. (Previously Presented) The method of claim 32, wherein
said user station displays a locally stored thumbnail image
corresponding to said digital image while said ordering information is
exchanged between said user station and said external network entity.

37. (Previously Presented) A computer program embodied in a computer-
readable medium for on-line ordering of image-related services, comprising:

Handwritten: > (comp) medium
a receiving code segment for receiving, at a user station, a digital image;
a network connection code segment for establishing a network
connection between said user station and an external network entity;
Handwritten: accessing an application at the external network entity through the
network connection;

an ordering code segment for exchanging ordering information, between
said user station and said external network entity after accessing the
application at the external network entity, for an image-related service for said
digital image; and

an uploading code segment for uploading said digital image to said external network entity or another external network entity subsequent to exchanging all ordering information.

38. (Previously Presented) The invention of claim 37, wherein said user station receives digital images from at least two of a plurality of different sources.

39. (Previously Presented) The invention of claim 37, wherein said computer program embodied on said computer-readable medium further comprises:

a display code segment for displaying on said user station a locally stored thumbnail image corresponding to said digital image while said ordering information is exchanged between said user station and said external network entity.

40. (Previously Presented) The invention of claim 39, wherein said computer program embodied on said computer-readable medium further comprises:

a thumbnail image transmitting code segment for sending, to said external network, a pointer to said thumbnail image locally stored at said user station.

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41. (Previously Presented) A computer signal for on-line ordering of image-related services, comprising:

- a receiving segment for receiving, at a user station, a digital image;
- a network connection segment for establishing a network connection between said user station and an external network entity;
- accessing an application at the external network entity through the network connection;
- an ordering segment for exchanging ordering information, between said user station and said external network entity after accessing the application at the external network entity, for an image-related service for said digital image;
- and
- an uploading segment for uploading said digital image to said external network entity or another external network entity subsequent to exchanging all ordering information.

42. (Previously Presented) The invention of claim 41, wherein said user station receives digital images from at least two of a plurality of different sources.

43. (Previously Presented) The invention of claim 41, wherein said user station receives said digital image using a shell extension of an operating system to access said digital image from a file system.

44. (Previously Presented) The invention of claim 41, wherein said computer signal further comprises:

a display segment for displaying on said user station a locally stored thumbnail image corresponding to said digital image while said ordering information is exchanged between said user station and said external network entity.

45. (Previously Presented) The invention of claim 44, wherein said computer signal further comprises:

a thumbnail image pointer transmitting segment for sending, to said external network, a pointer to said thumbnail image locally stored at said user station.

46. (Previously Presented) The invention of claim 28, wherein said user station displays a locally stored thumbnail image corresponding to any one of the first, second, and third image data while sending ordering information to said network sales/order processing server.

47. (Previously Presented) The invention of claim 46, wherein said network access protocol module sends said network sales/order processing server a pointer to said thumbnail image locally stored at said user station.

48. (Previously Presented) The invention of claim 37, wherein

said user station receives said digital image using a shell extension of an operating system to access said digital image from a file system.

49. (Previously Presented) The method of on-line ordering of image-related services as recited in claim 32, wherein the step of establishing a network connection between the user station and the external network entity further comprises:

initiating an application at a network access protocol module through an extension to an operating system desktop shell interface.

50. (Previously Presented) The method of on-line ordering of image-related services as recited in claim 32, wherein the digital image data may be received from at least one of a digital device interface applications program, a photo editing applications program, and the shell extension.

51. (Previously Presented) The method of on-line ordering of image-related services as recited in claim 32, wherein the step of exchanging ordering information further comprises:

providing at least one pointer to a thumbnail file representing at least one of the images of the digital image data.

52. (Previously Presented) The method of on-line ordering of image-related services as recited in claim 32, wherein the step of exchanging ordering information further comprises:

providing information related to the resolution of the digital image data.

53. (Previously Presented) The computer-program embodied in the computer-readable medium for on-line ordering of image-related services as recited in claim 37, wherein code segment for establishing a network connection between the user station and the external network entity further comprises:

an initiating code segment for initiating an application at a network access protocol module through an extension to an operating system desktop shell interface.

54. (Previously Presented) The computer-program embodied in the computer-readable medium for on-line ordering of image-related services as recited in claim 37, wherein the digital image data may be received from at least one of a digital device interface applications program, a photo editing applications program, and the shell extension.

55. (Previously Presented) The computer-program embodied in the computer-readable medium for on-line ordering of image-related services as recited in claim 32, wherein the code segment for exchanging ordering information further comprises:

a code segment for providing at least one pointer to a thumbnail file representing at least one of the images of the digital image data.

56. (Previously Presented) The computer program embodied in the computer-readable medium for on-line ordering of image-related services as recited in claim 32, wherein the code segment for exchanging ordering information further comprises:

a code segment for providing information related to the resolution of the digital image data.

57. (Previously Presented) The computer signal for on-line ordering of image-related services as recited in claim 41, wherein the segment for establishing a network connection between the user station and the external network entity further comprises:

a segment for initiating an application at a network access protocol module through an extension to an operating system desktop shell interface.

58. (Previously Presented) The computer signal for on-line ordering of image-related services as recited in claim 41, wherein the digital image data may be received from at least one of a digital device interface applications program, a photo editing applications program, and the shell extension.

59. (Previously Presented) The computer signal for on-line ordering of image-related services as recited in claim 41, wherein the segment for exchanging ordering information further comprises:

a segment for providing at least one pointer to a thumbnail file representing at least one of the images of the digital image data.

60. (Previously Presented) The computer signal for on-line ordering of image-related services as recited in claim 41, wherein the segment for exchanging ordering information further comprises:

a segment for providing information related to the resolution of the digital image data.